

FEDERAL MAIL SECTION
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Federal Communications Commission

DA 95-2178

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

MM Docket No. 95-160

In the Matter of

Amendment of Section 73.202(b)
Table of Allotments, RM-8710
FM Broadcast Stations.
(Kewanee, Illinois)

NOTICE OF PROPOSED RULE MAKING

Adopted: October 16, 1995; Released: October 30, 1995

Comment Date: December 21, 1995

Reply Comment Date: January 5, 1996

By the Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by Virden Broadcasting Corporation ("petitioner"), licensee of Station WJRE(FM), Channel 221A, Kewanee, Illinois, proposing the substitution of Channel 230A for Channel 221A at Kewanee, Illinois, and the modification of Station WJRE(FM)'s license accordingly. Petitioner states its intention to apply for Channel 230A, if allotted.

2. In support of its proposal, petitioner states that at its presently licensed site, Station WJRE(FM) is short-spaced to Station WBGE(FM), Channel 222A, Peoria, Illinois, by 5.85 kilometers and to the application site of Station WZBN(FM), Channel 221B1, Carthage, Illinois, by 4.06 kilometers. Petitioner further states that these short-spacings arise from the Commission's increased minimum distance separation requirements for Class A stations, citing Second Report and Order, MM Docket No. 88-375, 4 FCC Rcd 6375 (1989), aff'd, 6 FCC Rcd 3417 (1991).

Petitioner asserts that because of the short-spacings, Station WJRE(FM) cannot increase its power to six kilowatts at its present transmitter site. Petitioner maintains that the substitution of Channel 230A at Kewanee would allow Station WJRE(FM) to increase its power to six kilowatts with a slight change in its transmitter site or by utilizing a directional antenna at

its present transmitter site pursuant to Section 73.215 of the Commission's Rules.

3. We believe the proposal warrants consideration because the proposed substitution of Channel 230A for Channel 221A at Kewanee would enable Station WJRE(FM) to increase its power to six kilowatts and would eliminate the short-spacings to the licensed site of Station WBGE(FM) at Peoria and to the application site of Station WZBN(FM) at Carthage, Illinois. An engineering analysis has determined that Channel 230A can be allotted to Kewanee in compliance with the Commission's minimum distance separation requirements with a site restriction of 0.8 kilometers (0.5 miles) west at petitioner's requested site.¹ As requested, we also propose to modify Station WJRE(FM)'s license to specify operation on Channel 230A in lieu of Channel 221A at Kewanee, Illinois.

4. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

City	Channel No.	
	Present	Proposed
Kewanee, Illinois	221A	230A

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before **December 21, 1995**, and reply comments on or before **January 3, 1996**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

John F. Garziglia, Esq.
Pepper & Corazzini, L.L.P.

¹The coordinates for Channel 230A at Kewanee are North Latitude 41-14-15 and West Longitude 89-56-15.

1776 K Street, N.W., Suite 200
Washington, D.C. 20006
(Counsel for Petitioner)

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

8. For further information concerning this proceeding, contact Sharon P. McDonald, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off protection. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposals in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the

Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments

and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Center (Room 239) at its headquarters, 1919 M Street, N.W., Washington, D.C.